



Federal Court of Australia

District Registry: Queensland

Division: General

No: QUD32/2018

**STEVEN NEVILLE STAATZ AS LIQUIDATOR OF WOLLUMBIN HORIZONS
PTY LTD (IN LIQUIDATION) ACN 606 581 364**

Plaintiff

RON BERRY and others named in the schedule

Defendant

ORDER

JUDGE: JUSTICE DERRINGTON

DATE OF ORDER: 20 June 2019

WHERE MADE: Brisbane

THE COURT ORDERS THAT:

1. The plaintiff is justified in treating the deed of trust dated 23 June 2015 between Peter Hetherington, as settlor, and Wollumbin Horizons Pty Ltd (the Company), as trustee, as ineffective and the trust purportedly established thereby as invalid.
2. The plaintiff is justified in treating real property situated at 3222 Kyogle Road, Mount Burrell in New South Wales, being Lot 20 in Deposited Plan 755714A and 755714B and Lot 2 in Deposited Plan 1148316 (being all the land in folio identifiers 20/755714A, 20/755714B and 2/1148316) (the Property) as being held by the Company, as bare trustee, subject to any charge or lien that the Company has over the Property to secure payment of any debts properly incurred by the Company as trustee, pursuant to a constructive trust (the Trust) for those parties who subscribed money for the purposes of becoming members of the Bhula Bhula Community.
3. The plaintiff is justified in treating the beneficiaries of the Trust as those persons whom the plaintiff identifies as having subscribed to become members of the Bhula Bhula Community where the funds so subscribed were or were intended to be used by the subscriber in relation to the costs of acquisition of the Property, the purchase price of the Property, the discharge of the mortgage over the Property, or for the maintenance or improvement of the Property, in proportions calculated rateably to the amount of money they each contributed to the total funds subscribed for those purposes.
4. The plaintiff is justified in proceeding to market for sale and selling the Property in the way he considers appropriate.

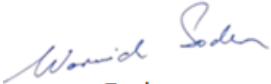


5. The plaintiff is appointed receiver, without security, over the Property, pursuant to s 57 of the *Federal Court of Australia Act 1976* (Cth).
6. The plaintiff be so appointed with the powers provided by s 420 of the *Corporations Act 2001* (Cth) as if the reference therein to “the corporation” were to “the Trust” together with the powers that a liquidator has in respect of property of a company (in its role as legal owner and trustee) pursuant to s 477 of that Act.
7. The need for the plaintiff, as receiver, to file a guarantee under rr 14.21 and 14.22 of the *Federal Court Rules 2011* (Cth) is dispensed with.
8. Pursuant to s 74MA of the Real Property Act 1900 (NSW), Melissa Hirsch, within 14 days of the date of this order, withdraw the caveat (dealing number AM352133M) from the title of the Property.
9. It is declared that the Company has a right of indemnity from the assets of the Trust for Trust debts, being those debts properly incurred as trustee of a constructive trust.
10. The plaintiff is justified in calling for proofs of Trust debts of the Company, being those debts properly incurred as a trustee of a constructive trust, and to have recourse to the assets of the Trust to satisfy those claims, as accepted.
11. The plaintiff is justified in recovering the costs and expenses incurred by the Company and the plaintiff in realising the assets of the Trust, and otherwise dealing with the Trust, from the assets of the Trust.
12. The plaintiff, in his capacity as administrator and liquidator of the Company and as receiver of the Property, is entitled to be paid from the proceeds of the sale of the Property:
 - (a) his costs, expenses and remuneration to the extent to which they relate to work undertaken by the plaintiff in relation to the administration of the Trust including the work undertaken to render the Company’s right of exoneration available to meet the claims of the Company’s creditors whose debts were incurred in the administration of the trust;
 - (b) an amount in respect of his costs, expenses and remuneration relating to general insolvency matters, to the extent the costs, expenses and remuneration concern the administration of the Trust.
13. It is declared that the plaintiff is entitled to a lien over the assets of the Trust in respect of his fees, expenses, and outlays incurred in his capacity as administrator and, subsequently, as liquidator of the Company to the extent allowed by the Court.
14. The plaintiff’s costs of the proceeding (including reserved costs), calculated on a full indemnity basis, be paid out of the assets of the Trust and, to the extent not satisfied from the assets of the Trust, be costs in the liquidation.



15. It is declared that the plaintiff has a lien over the assets of the Trust for his costs of these proceedings.
16. The third, fourth, fifth and sixth defendants' costs of the proceeding (including reserved costs), calculated on a full indemnity basis, be paid out of the assets of the Trust.
17. Liberty to apply.

Date that entry is stamped: 20 June 2019.


Registrar



Schedule

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Second Defendant	GILLIAN NORMAN
Third Defendant	EMANUELE AGUS
Fourth Defendant	MELISSA HIRSCH
Fifth Defendant	STUART NEWMAN
Sixth Defendant	NORMA GEELIN MOU
Seventh Defendant	PHILLIP MORANDINI
Eighth Defendant	DEAN MOONEY
Ninth Defendant	CRAIG SCOTT